

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MEMORANDUM

To: Interested Parties
From: Michael J. Sullivan, Director 
Subject: Contributions to Political Committees by Credit Card

M.G.L. c. 55, § 9 authorizes candidates and political committees to accept contributions by credit card where the transaction results in "a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder." OCPF promulgated regulations at 970 CMR 1.09 to govern the receipt of credit card contributions. This memorandum is intended to explain these regulations in more detail. Candidates and committees that intend to accept credit card contributions should also read 970 CMR 1.09, which may be accessed from the "Legal Guidance" page of OCPF's website, www.mass.gov/ocpf.

I. AUTHORIZED TRANSACTIONS

A. VIA INTERNET OR SIGNED AUTHORIZATION

As the above-quoted language of M.G.L. c. 55, § 9 suggests, in order to make a contribution by credit card, a contributor must first authorize the transaction either on the Internet or by way of a signed paper record as described below. Therefore, permissible transactions are limited to (1) face-to-face transactions where, in the presence of a candidate, committee member or agent thereof, a cardholder-contributor signs a credit card receipt, or an authorization to charge his or her credit card; (2) transactions where the cardholder-contributor provides credit card information and a signed authorization by mail to a candidate or committee; and (3) Internet transactions that comply with 970 CMR 1.09(2). A candidate or committee may not process a credit card transaction based solely on a verbal authorization by the contributor-cardholder, such as over the telephone or via e-mail. See 970 CMR 1.09(3) & (4).



B. DUTY TO ENSURE COMPLIANCE

Candidates and committees must review all credit card contributions received to determine that the contributions comply with the source and limitation requirements of the campaign finance law. Any contribution determined to be illegal, including excess contributions, must be refunded to the contributor in accordance with 970 CMR 1.04(8).¹

II. CONTRIBUTIONS BY DEBIT CARDS OR WIRE TRANSFER

Pursuant to M.G.L. c. 55, § 9, contributions from any individual that exceed \$50, including any previous contributions made by that individual during the year, must be paid by personal check or other “written instrument.” A “written instrument” is “a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account [that] ... contains the contributor’s funds ... [or] for contributions by credit card, a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder.” The term “written instrument” does not include debit cards or electronic fund transfers.² See M.G.L. c. 55, § 9. Currently, there is no authority in the campaign finance law to allow candidates or committees to accept debit card contributions, even debit “check” cards that carry a Visa or MasterCard logo, or contributions via wire transfer, unless expressly authorized by Section 9A.

III. INTERNET TRANSACTIONS

A. CONTRACTING WITH VENDOR OR MERCHANT PROVIDER

Where a candidate or committee contracts with a vendor or merchant provider, such as a bank, to process credit card contributions on the candidate’s or committee’s behalf, such a contract must conform to the campaign finance regulations at 970 CMR 1.09(2)(a). This provision requires that the contract be consistent with the vendor’s customary and usual business practices, and not provide any discount that is not available to other candidates or political committee or the general public. In addition, the candidate or committee must be responsible for paying its portion of the fees required by the merchant provider or vendor. See 970 CMR 1.09(2)(a)1-3.

B. CONTENT OF WEBSITES THAT SOLICIT CREDIT CARD CONTRIBUTIONS

The campaign finance regulations at 970 CMR 1.09(2)(b) set forth the criteria for web sites that solicit political contributions by credit card. Specifically, the sites must: (1) set

¹ 970 CMR 1.04(8) states, in relevant part, “Any contribution which is determined to be illegal, subsequent to its deposit, shall be refunded to the contributor immediately upon this determination. This refund shall be in the form of a check written to the contributor on the account of the candidate or political committee into which the original contribution was deposited.”

² It should be noted that, notwithstanding the definition of “written instrument,” M.G.L. c. 55, § 9A authorizes certain contributions by individuals to political action committees via wire transfer or electronic funds transfer, such as payroll deductions.

forth appropriate questions, which require an affirmative response from a contributor, to determine that the source and amount of the contribution complies with M.G.L. c. 55 and 970 CMR 1.09; (2) clearly identify the name of the candidate or committee involved in the solicitation; (3) require a contributor to certify with an affirmative action that the contributor is responsible for making payments on the credit card and that the contributor's personal funds will be the true source of the contribution as required by M.G.L. c. 55, § 10; and (4) clearly distinguish between required and optional information collected.

C. TRANSACTION CONFIRMATIONS

Internet credit card contributions must be promptly confirmed in writing via e-mail by the recipient candidate or committee, or by regular mail if the contributor does not provide an e-mail address. See 970 CMR 1.09(2)(c).

D. SPECIAL ISSUES REGARDING *PAYPAL*

Paypal.com is a website that offers individual consumers who register on the site the option to securely send funds, at no cost, from an existing credit card, debit card, or bank account to anyone with an e-mail address. *Paypal* acts like an intermediary by charging or debiting the credit card or bank account designated by the payor and notifying the payee via e-mail that they have received a payment. In order to receive the payment, the recipient must register as a member of *Paypal* by establishing either a "Personal," "Business," or "Premier" account.

According to information on *Paypal.com*, members with "Personal" accounts may receive payments derived from a payor's debit card or bank account at no cost. *Paypal* in this case charges a fee, however, to process credit card transactions. Therefore, only those who open a "Premier" or "Business" account and agree to their fee schedule are eligible to receive credit card payments.

It is this Office's understanding that certain candidates and committees have established campaign websites that have utilized *Paypal* to process credit card contributions from that site. It would appear consistent with the campaign finance law for candidates and committees to utilize *Paypal* as a merchant provider to accept Internet credit card contributions in this manner, as long as the provisions of 970 CMR 1.09(2), regarding any merchant contract, the website's content and written transaction confirmations, are otherwise met.

On the other hand, it would not be consistent with the Massachusetts campaign finance law or regulations to utilize *Paypal*: (1) to receive funds directly from *Paypal.com*, which does not conform to 970 CMR 1.09(2)(b), or (2) to receive funds from any source other than a credit card, such as from a bank account or a debit card, contrary to M.G.L. c. 55, § 9 (See Section III, above), even if the website through which the contribution is made otherwise complies with the applicable regulations. Under no circumstances should a Massachusetts candidate or political committee, even those with registered "Premier" or "Business" accounts, accept these types of contributions through *Paypal*.

As with any illegal contribution, such contributions, as noted above, must immediately be refunded to the contributor in accordance with 970 CMR 1.04(8).

D. SOLICITATIONS ON MULTIPLE SITES

There is nothing in the campaign finance law, M.G.L. c. 55, to preclude a candidate's or committee's merchant provider or vendor from accepting credit card contributions on behalf of the candidate or committee via multiple websites, as long the content of each of the websites conforms to 970 CMR 1.09(2). For example, subject to the appropriate regulations, candidates and committees may, in addition to their own websites, receive Internet credit card contributions solicited on their behalf by an independent website created and maintained by unpaid volunteers. See AO-04-11.

IV. RECORD KEEPING

Besides M.G.L. c. 55, §§ 2 and 5, and 970 CMR 1.10, the record keeping provisions of the campaign finance statute and regulations that are applicable to all political contributions, the campaign finance regulation at 970 CMR 1.09(5)(a) imposes certain additional requirements in regard to Internet credit card contributions. Specifically, this regulation requires electronic (where applicable) and paper records of credit card contributions, which include the following:

- (1) the name and residential address of the contributor;
- (2) the date received and amount of the contribution;
- (3) the occupation and employer of the contributor if the annual aggregate contribution(s) from the individual is equal to or greater than \$200;
- (4) any costs or fees deducted by or paid to the vendor or the merchant provider; and
- (5) the contributor's billing address, if it is different from his or her mailing address.

In addition, the contributor's credit card number and expiration date must be maintained either by the candidate or committee, or by a vendor or merchant provider on behalf of the candidate or committee pursuant to a written agreement. See 970 CMR 1.09(5)(b).

V. REPORTING

A. REPORTING CONTRIBUTIONS AND FEES

A credit card contribution is deemed "received" for the purpose of the campaign finance law on the day that the contribution is transmitted to the candidate's merchant provider or vendor by the cardholder's bank. See 970 CMR 1.09(5)(b). Also, the amount of the contribution reported and attributed to the individual contributor is the gross amount provided by the contributor, even where a vendor or merchant provider deducts a transaction fee prior to depositing the proceeds of the contribution into the candidate or committee's account. See 970 CMR 1.09(5)(c).

All credit card fees are reportable “expenditures” by the candidate or committee for the purposes of the campaign finance law, even if the fee is directly deducted by the vendor or merchant provider prior to deposit in the committee account. See 970 CMR 1.09(5)(c).

C. DISCLOSURE BY NON-DEPOSITORY CANDIDATES AND COMMITTEES

As with any monetary contribution, non-depository candidates and committees are required to report (gross) credit card contributions on Schedule A of the relevant campaign finance reports, including, where applicable, all information required by M.G.L. c. 55, § 18, such as the contributor’s name and residential address, or occupation and employer. Likewise, all fees and costs paid by a candidate or committee in conjunction with the solicitation and receipt of credit card contributions are reported on Schedule B of the relevant campaign finance report. This includes all flat fees and per transaction fees, whether or not the fee is paid separately by the committee or is deducted from the proceeds of funds received by the vendor or merchant provider, i.e. netted out of the contributions.

For example, if an individual makes a \$100 credit card contribution to a candidate’s committee on the Internet, the committee should disclose a \$100 receipt on Schedule A of the relevant campaign finance report from that individual, even if the committee’s merchant provider deducted its fee, say 3%, and only deposited \$97 from that individual into the committee’s account. The committee would reflect the \$3 fee as an expenditure made payable to the merchant provider on Schedule B of the same report.

D. DISCLOSURE BY DEPOSITORY CANDIDATES AND COMMITTEES

Depository Committees are responsible for reporting credit card contribution activity directly with OCPF. This is done by filing CPF Form D 106 reports in accordance with the same reporting schedule applicable to depository banks: on the fifth day of each month, complete as of the first day of that month and, during the last six months of an election year, on the 20th day of each month complete as of the 15th day of that month.

Fees and costs incurred in conjunction with the receipt of credit card contributions that are paid using a depository check will be disclosed by the depository bank as with any other expenditure. The same holds true for any fees directly debited from a candidate’s or committee’s account by a vendor or merchant provider. Please note, however, that a candidate or committee may need to amend a bank report that reflects a fee paid to a vendor or merchant provider in a manner other than by a depository check, such as one directly debited from the committee’s account, in order to explain the purpose of the expenditure.

In contrast, candidates and committees must report credit card processing fees in instances where the vendor or merchant deducts the fee from the proceeds of a contribution(s) received prior to depositing the funds in the depository account. This is necessary because the amount of the (gross) contribution reported on the D 106 report will vary from the (net) amount actually deposited in the depository account. A

candidate or committee accounts for this variance and discloses the fee(s) by making an adjustment on the D 106 so that the amount of the deposit listed on the report accurately reflects the money received by the bank. The adjustment is made by calculating the aggregate amount of the fee(s) deducted by a vendor or merchant provider during the reporting period and then “subtracting” this amount from the sum of the gross receipts.

For candidates and committees that file paper reports with OCPF, the subtraction should be done manually at the end of the D 106 report. Candidates and committees that e-file accomplish the adjustment by using the vendor or merchant’s name and address to enter a negative “receipt” in the Reporter software in the amount of the aggregate fees. When the relevant D 106 report is created, OCPF’s software will automatically subtract the amount of the negative figure from the sum of the contributions reported. All candidates and committees should identify the purpose of the adjustment as a payment for credit card processing fees.

For an example, please see the attached sample D 106 report, which involves of three contributions totaling \$250 (\$100, \$100, and \$50). Assuming that the committee’s merchant bank deducted its 3% fee prior to depositing these amounts, only \$242.50 would actually have been received by the depository bank. To account for this, a negative receipt of \$7.50 (\$3, \$3, and \$1.50) was added to the deposit report created by the committee using OCPF’s Reporter software.

Any candidates or committees who have additional questions regarding credit card contributions after reviewing the attached regulations should contact OCPF for further guidance.

Form CPF D106: Report of Receipts

Office of Campaign & Political Finance

Candidate Name: _____

Committee Name: _____

Name of Bank: _____

Deposit Sequence: _____ 11-10-2004-04 _____

Deposit Date: **11/10/2004**Page #: **1 of 1**

<u>Payment Form</u>	<u>Name & Address</u>	<u>Amount</u>
OTHER		(\$7.50)
CREDIT CARD	Black, Mary 44 Phillips Street Boston, MA 02114	\$100.00
CREDIT CARD	Doe, John 250 Garden Street Boston, MA 02114	\$100.00
CREDIT CARD	Smith, Robert 384 Myrtle Street Boston, MA 02114	\$50.00

Total this page:

\$242.50

Contributions itemized this deposit:

Contributions not itemized this deposit:

\$0.00

Total Deposit (sum of all pages):

\$0.00